

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

BRANDY OSTERHOUT,

Plaintiff,

v.

MEDICAL STAFF AT FMWCC, *et al.*,

Defendants.

Case No. 2:24-cv-01729-GMN-MDC

ORDER

Plaintiff Brandy Osterhout brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that she claims she suffered while incarcerated at Florence McClure Women's Correctional Center. (ECF No. 1-1.) On September 23, 2024, this Court ordered Osterhout to file a fully complete application to proceed *in forma pauperis* or pay the full \$405 filing fee on or before November 20, 2024. (ECF No. 3). The Court warned Osterhout that the action could be dismissed if she failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$405 filing fee for a civil action by that deadline. (*Id.* at 2). In response, Osterhout filed a financial certificate, but she did not file an application to proceed *in forma pauperis*. (ECF No. 4).

In light of Osterhout's apparent attempt to comply with the Court's order, on December 4, 2024, the Court considered meaningful alternatives to dismissal and issued another order granting Osterhout one final opportunity to submit a complete application to proceed *in forma pauperis* on or before January 6, 2025. (ECF No. 5.) That extended deadline has past, and Osterhout still has not filed a complete application to proceed *in forma pauperis*. Nor did Osterhout request an extension or otherwise respond to the Court's order granting an extension.

1 **I. DISCUSSION**

2 District courts have the inherent power to control their dockets and “[i]n the  
3 exercise of that power, they may impose sanctions including, where appropriate . . .  
4 dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831  
5 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court  
6 order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir.  
7 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to  
8 keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th  
9 Cir. 1987) (dismissal for failure to comply with court order). In determining whether to  
10 dismiss an action on one of these grounds, the Court must consider: (1) the public’s  
11 interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket;  
12 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
13 cases on their merits; and (5) the availability of less drastic alternatives. See *In re*  
14 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting  
15 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

16 The first two factors, the public’s interest in expeditiously resolving this litigation  
17 and the Court’s interest in managing its docket, weigh in favor of dismissal of Osterhout’s  
18 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal  
19 because a presumption of injury arises from the occurrence of unreasonable delay in filing  
20 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542  
21 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of  
22 cases on their merits—is greatly outweighed by the factors favoring dismissal.

23 The fifth factor requires the Court to consider whether less drastic alternatives can  
24 be used to correct the party’s failure that brought about the Court’s need to consider  
25 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining  
26 that considering less drastic alternatives *before* the party has disobeyed a court order  
27 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th

1 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that  
2 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court’s  
3 order as satisfying this element[.]” *i.e.*, like the “initial granting of leave to amend coupled  
4 with the warning of dismissal for failure to comply[.]” have been “eroded” by *Yourish*).  
5 Courts “need not exhaust every sanction short of dismissal before finally dismissing a  
6 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779  
7 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until  
8 and unless Osterhout either files a fully complete application to proceed *in forma pauperis*  
9 or pays the \$405 filing fee for a civil action, the only alternative is to enter a second order  
10 setting another deadline. But the reality of repeating an ignored order is that it often only  
11 delays the inevitable and squanders the Court’s finite resources. The circumstances here  
12 do not indicate that this case will be an exception: there is no hint that Osterhout needs  
13 additional time or evidence that she did not receive the Court’s order. Setting another  
14 deadline is not a meaningful alternative given these circumstances. So the fifth factor  
15 favors dismissal.

## 16 II. CONCLUSION

17 Having thoroughly considered these dismissal factors, the Court finds that they  
18 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without  
19 prejudice based on Osterhout’s failure to file a fully complete application to proceed *in*  
20 *forma pauperis* or pay the full \$405 filing fee in compliance with this Court’s September  
21 23, 2024, and December 4, 2024, orders. The Clerk of Court is directed to enter judgment  
22 accordingly and close this case. No other documents may be filed in this now-closed  
23 case. If Osterhout wishes to pursue her claims, she must file a complaint in a new case.

24 DATED THIS 11 day of February 2025.

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Gloria M. Navarro, Judge  
United States District Court